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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. ~~1018~~ 657

THE BRADSTREET COMPANY, PLAINTIFF IN ERROR,

vs.

FORRESTER H. HIGGINS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED OCTOBER 8, 1883.

Transcripts of Records 1884

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Supreme Court of U. S.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 1048.

THE BRADSTREET COMPANY, PLAINTIFF IN ERROR,

vs.

FORRESTER H. HIGGINS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

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a UNITED STATES OF AMERICA, *ss.*

[SEAL.] The President of the United States to the Honorable the Judge of the Circuit Court of the United States for the western division of the western district of Missouri, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the October term, 1882, thereof, between Forrister H. Higgins, as plaintiff, and The Bradstreet Company, defendant, a manifest error hath happened, to the great damage of the said The Bradstreet Company, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this sixteenth day of December, in the year of our Lord one thousand eight hundred and eighty-two.

Issued at office in the city of Kansas, with the seal of the circuit court of the United States for the western district of Missouri, dated as aforesaid.

H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri.

Allowed by— WARREN WATSON, *D. C.*
A. KREKEL, *Judge.*

b *Return to Writ.*

UNITED STATES OF AMERICA, *Western District of Missouri,* } *ss.*

In obedience to the command of the within writ, I herewith transmit to the —— court of the United States a duly certified transcript of the record and proceeds in the within entitled case, together with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of said —— court, at the city of Jefferson, this —— day of ——, A. D. 187—.

——, *Clerk*

[Endorsed:] No. ——, United States circuit court, western district of Missouri. —— *vs.* ——. Writ of error to the —— court

of the —— of Missouri. Returned and filed —— day of ——, 187—. ——, clerk.

c The United States of America to Forrester H. Higgins, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the western division of the western district of Missouri, wherein The Bradstreet Company is plaintiff in error and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arnold Krekel, judge of the circuit court of the United States for the western district of Missouri, this 16th day of December, in the year of our Lord one thousand eight hundred and eighty-two.

A. KREKEL, *Judge.*

d UNITED STATES OF AMERICA, *Western District of Missouri,* } *ss.*

We hereby acknowledge due service of the within citation, this 16th day of December, A. D. 188—.

KARNES & ESS.
C. L. DOBSON,
Attorneys for Defendant in Error.

[Endorsed:] United States —— court, western district of Missouri. —— *vs.* ——. Citation. Filed ——, 187—. ——, clerk.

1 UNITED STATES OF AMERICA, *Set.*

Pleas and proceedings had before the circuit court of the United States, for the western division of the western district of Missouri, in the case of Forrester H. Higgins, complainant, against The Bradstreet Company, defendant, at law.

Be it remembered that heretofore, to wit, in vacation of said circuit court, and on Monday, the 26th day of April, A. D. 1880, the following entry was made upon the order book of said court, to wit:

FORRESTER H. HIGGINS *against* THE BRADSTREET CO. } 189.

This day there is received and filed herein a transcript of record in the above cause.

The said transcript of record is in words and figures as follows, to wit:

STATE OF MISSOURI, } ss:
County of Jackson, }

Be it remembered that on the 9th day of February, A. D. 1880, there was filed in the office of the clerk of the circuit of the county aforesaid a petition, wherein Forrester H. Higgins is plaintiff, and The Bradstreet Company is defendant, which said petition is in words and figures as follows, to wit:

In the Circuit Court of Jackson County, Missouri, at Kansas City.

FORRESTER H. HIGGINS, Pl'ff.
vs.
THE BRADSTREET COMPANY, Def't.

2 Plaintiff says that heretofore he was connected with what is know as a Mercantile Agency, with offices and correspondents at different places in the United States and Canadas, and in said offices there had been at great labor and expense collected and placed in records accurate information concerning the different business men, and interests of the country, and this information for the consideration agreed upon was imparted from time to time to persons wishing to know the business standing of others at different places. Plaintiff's said office was at Kansas City, Missouri, and of which he was the sole owner and proprietor at the date hereinafter mentioned, said office of plaintiff had been established for more than ten years and in it there had been collected and recorded at a great expense, in systematic shape information showing the business standing of the persons, firms and corporations doing business or which had done business at and during that time in Kansas City and in a very large extent of territory adjacent thereto.

The office of the plaintiff as the source of such information had been long and favorably known, and it had a large and well-established and profitable business, consisting of regular customers, who sought from it the information there to be had as aforesaid, and for which they paid large sums. The property of said office of plaintiffs consisted of office fixtures, books, records, as aforesaid, the subscriptions then on hand, good will, *the* and was of the value of eight thousand dollars.

The plaintiff says the defendant is a corporation incorporated and organized under the laws of some one of the United States, but which one he does not know, and is carrying on business in
3 this State; that it is a mercentile agency, conducting its business of the kind and in the manner hereinbefore described; that in the [year] 1879 said defendant opened an office and commenced business in Kansas City aforesaid, and employed this plaintiff as superintendent.

Plaintiff says that on —— day of July, 1879, with the knowledge and consent of defendant, he, as such superintendent of defendant, succeeded to the entire business and property of plaintiff, as aforesaid, and the same has been fully absorbed by and converted to the use of defendant.

Plaintiff says that defendant undertook and agreed with defend-

ant to pay him for said property as much as it was reasonably worth, and plaintiff says the same was worth eight thousand dollars, which sum defendant refused to pay.

Wherefore plaintiff asks judgment for the sum of eight thousand dollars, with interest at rate of six per cent. from —— day of July, 1879, and for costs.

KARNES & ESS,
Plaintiff's Att'ys.

And upon the filing of said petition a writ of summons was issued by the clerk of the circuit court within and for the county & State aforesaid, directed to the sheriff of Jackson county, Missouri, which is in words and figures as follows, to wit:

Circuit Court Summons.

The State of Missouri to the Sheriff of Jackson county, Greeting:

You are hereby commanded to summon the Bradstreet Company, if it be found in your county, that it be and appear before
4 the honorable judges of our circuit court of Jackson county at the court-house, in the city of Kansas, on the second Monday in April next, it being the 12th day of said month, then and there to answer unto the complaint of Forrester A. Higgins, as set forth in the foregoing petition, and that you then and there have this writ, and that you certify how you execute the same.

Witness Wallace Laws, clerk of the said circuit court, with the seal thereof hereunto affixed, at office in said Kansas City, this 9th day of February, A. D. 1880.

[SEAL.] WALLACE LAWS, *Clerk.*
By JOHN C. WALLACE, *Deputy C.*

Which said writ was returned with the following endorsement thereon, to wit:

I, O. P. W. Bailey, sheriff, Jackson county, Missouri, certify that I executed this writ on the 24th day of February, 1880, by delivering to and leaving with W. M. R. Vore, superintendent of the within-named defendant, The Bradstreet Company, a copy of this writ, together with a copy of the petition hereto attached.

Done in Jackson county, Missouri.

O. P. W. BAILEY, *Sheriff.*
By J. FRANK THOMAS, *Deputy.*

Afterwards, to wit, at the regular April term, A. D. 1880, of said circuit court as aforesaid, and on the 1st day thereof, the same being the 12th day of said month, the following further proceedings were had herein:

FORRESTER H. HIGGINS
vs. } 4506.
THE BRADSTREET COMPANY.

Now, at this day, come parties by attorneys, and defendant files

its petition duly verified and bond for the removal of this
5 cause into the circuit court of the United States, which said bond, being in due form, with good and sufficient surety, is by the court approved, and the court decides to proceed no further herein, and orders that this cause be removed from this court into the circuit court of the United States for the western division of the western district of Missouri. Said petition is in words and figures as follows, to wit:

In the Circuit Court of Jackson county, State of Missouri, at Kansas City. April term, A. D. 1880.

FORRESTER H. HIGGINS, Plaintiff,
vs.
THE BRADSTREET COMPANY, Defendant.

To the hon. the circuit court of Jackson county, State of Missouri, at Kansas City:

Your petitioner, The Bradstreet Company, respectfully shows to this honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars.

That the controversy in said suit is between citizens of different States, and that your petitioner is the defendant therein, and was at the time of the commencement of this suit and still is a citizen of the State of Connecticut, and that said Forrester H. Higgins, the plaintiff, was then and still is a citizen of the State of Missouri.

And your petitioner offers herewith a bond with good and sufficient surety for his entering in the circuit court of the United States for the western division of the western district of Missouri, on the first day of its next session a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if
6 said court shall hold that this suit was wrongfully or improperly removed thereto.

And it prays this honorable court to proceed no further herein except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into the said circuit court of the United States, for the western division of the western district of Missouri.

GAGE & LADD,
Att'ys for Bradstreet Company, the Petitioner.

STATE OF MISSOURI, } ss:
County of Jackson, }

I, Sanford B. Ladd, being duly sworn, do say that I am a member of the firm of Gage and Ladd, the attorneys for the petitioner in the above entitled cause; that I have read the foregoing petition and know the contents thereof, and that the statements and allegations therein contained are true as I verily believe.

SANFORD B. LADD.

Subscribed and sworn to before me by the said Sanford B. Ladd, this 12th day of April, 1880.

WALLACE LAWS,
Clerk Clerk *of the Circuit Court of Jackson County, Mo.*

Said bond is in words and figures as follows, to wit:

In the Circuit Court of Jackson County, State of Missouri, at Kansas City. April Term, A. D. 1880.

FORRESTER H. HIGGINS, Plaintiff
vs.
THE BRADSTREET COMPANY, Defendant.

7 Know all men by these presents, that we, The Bradstreet Company, a corporation, as principal, and C. J. White, of Kansas City, Missouri, as security, are held and firmly bound unto Forrester H. Higgins, in the penal sum of two hundred dollars, for the payment whereof well and truly to be made unto the said Forrester H. Higgins, his heirs, and assigns, we bind ourselves, our successors, heirs, and representatives, jointly and severally by these presents.

Yet upon these conditions: The said Bradstreet Company having petitioned the circuit court of Jackson county, State of Missouri, at Kansas City, for the removal of a certain cause therein pending, wherein said Forrester H. Higgins is plaintiff, and the said Bradstreet Company is defendant, to the circuit court of the United States for the western division of the western district of Missouri.

Now, if the said Bradstreet Company shall enter in the said circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States, if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void, otherwise in full force and virtue.

In witness whereof, the said Bradstreet Company has caused these presents to be executed by its president and its corporate seal to be hereto affixed, and the said C. J. White has hereto set his hand and seal, this 6th day of April, A. D. 1880.

CHARLES F. CLARK, [SEAL.]
[SEAL.] *President of the Bradstreet Company.*
C. J. WHITE. [SEAL.]

8 STATE OF MISSOURI, }
County of Jackson. } *ss:*

I, Wallace Laws, clerk of the circuit court within and for the county aforesaid, do hereby certify that the foregoing transcript *to be* a true and perfect transcript of all the papers and record entries in the case wherein Forrester H. Higgins is plaintiff and the Bradstreet Company is defendant, as the same remains of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in Kansas City, this the 21st day of April, A. D. 1880.

[SEAL.] WALLACE LAWS, *Clerk.*
By L. F. McCOY, *D. C.*

And afterwards to wit, at the regular May term of said court, and on the 17th day of May, 1880, the following entry appears of record, to wit:

FORRESTER H. HIGGINS
against } 189.
THE BRADSTREET COMPANY.

In pursuance of a stipulation of counsel this day filed it is ordered that the defendant have leave to answer on or before the first day of July, 1880, and the plaintiff to reply on or before the first day of August, 1880.

Which said stipulation of counsel is in word and figures as follows, to wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

9 FORRESTER H. HIGGINS, Plaintiff,
vs.
THE BRADSTREET COMPANY, Defendant.

It is agreed in this cause that the defendant shall have leave to answer on or before the first day of July, 1880, and the plaintiff to reply on or before the 1st day of August, 1880.

KARNES & ESS,
Att'ys for Pl'ff.
GAGE & LADD,
Att'ys for Defendant.

And afterwards in vacation of said court, and on the 2d day of October, 1880, the following entry appears of record, to wit:

FORRESTER H. HIGGINS
against } 189.
THE BRADSTREET CO..

This day comes defendant by its attorneys, Gage and Ladd, and filed answer and counterclaim.

Which said answer and counterclaim is in words and figures as follows, to wit:

EXHIBIT A.

This agreement, made this fifth day of June, A. D. 1879, between the Bradstreet Company, of the city of New York and elsewhere, party of the first part, and Forrester H. Higgins, of Kansas City, Mo. party of the second part, witnesseth:

1. The said Bradstreet Company party of the first part, by its

president, Charles F. Clark, hereby employ the said party of the second part, as superintendent for the term from June 5th, 1879, to May 1st, 1880, it being the intention of the contracting parties to renew this agreement from year to year as long as mutually satisfactory, and hereby agree on condition of his keeping and observing the term of this agreement, to pay him one hundred ($100) dollars per month, payable monthly; and also such proportion of the net profits as hereinafter agreed, as the facts may warrant.

2. And the said The Bradstreet Company, party of the first part, agrees to pay the said party of the second part an additional compensation equal to *of* the net profits of the business properly belonging to and accruing from the said Kansas city office during the term aforesaid, provided any there be. It being understood and agreed that the net profits, so-called, of the business, shall be determined by deducting all legitimate expenses arising from the conduct of the business from the net cash receipts from subscriptions taken in the usual and regular way, and at prices approved by the said party of the first part. The said additional compensation to be ascertained and paid at the expiration of the term as above stated, except that should this agreement, from any cause, be sooner determined; then in such event, the profits of the business covering the full term shall be ascertained as though it had continued, but the division of profits shall be pro-rated for such time as this contract shall continue and be fulfilled.

3. The said Forrester H. Higgins, party of the second part, in consideration of the terms and payment above stated, hereby agrees to enter the employment of the said party of the first part in the capacity of superintendent, and during said employment agrees to devote his whole time, influence, and talents, during business hours, to the successful prosecution of the business of the said parties of the first part, and conform to the instructions already established for the general conduct of the business, or that may be hereafter from time to time established by the said party of the first part.

4. And the said Forrester H. Higgins, party of the second part, hereby covenants and agrees to and with the said party of the first part, that he will not communicate in any manner any information which he may derive from the written or printed reports or sheets of the said party of the first part, concerning the character, credit, or standing of any person or persons, nor communicate to any person or persons whatsoever any information concerning the business relations existing between the party of the first part and its patrons, or with its various offices, during the continuance of this agreement or at any subsequent time, except in the legitimate conduct of the business, and as he may be directed by the said party of the first part or its proper representative.

5. And the said Forrester H. Higgins, party of the second part, covenants and agrees that he will so conduct the business of the said office while under his charge, that the legitimate expenses shall not exceed the legitimate receipts.

6. It is mutually agreed that the failure of either party to keep the terms of this agreement shall make it null and void.

7. It is also mutually agreed that this agreement may be dissolved by the party of the first part allowing to the party of the second part one month's salary, or upon the party of the second part giving thirty days' written notice to the party of the first part.

12 In witness whereof, the said parties have hereunto set their hands and seals the day and year above written.

(Signed) CHARLES F. CLARK, [L. S.]
(Signed) FORRESTER H. HIGGINS. [L. S.]

In the United States Circuit Court, Western Division of the Western District of Missouri.

FORRESTER H. HIGGINS, Plaintiff,
vs.
THE BRADSTRET COMPANY, Defendant.

1. Defendant, for answer to plaintiff's petition, denies each and every allegation thereof not herein specifically admitted. Defendant admits that on the fifth day of June, 1879, by a contract in writing of that date, signed by plaintiff and defendant, it employed plaintiff as superintendent of its office at Kansas City, Missouri, for a term beginning on said fifth day of June, and ending on May first, 1880, at a monthly salary of one hundred dollars, to be paid plaintiff by defendant, and that plaintiff in and by said contract agreed to devote his entire time, influence, and talents to the defendant's said business, and to conform to the instructions established or that might thereafter be established by defendant, for the general conduct of its said business; defendant admits that plaintiff had, at the time of making said contract, an office at Kansas City, with some property in it pertaining thereto, that said property consisted of some office furniture of small value, and not exceeding one hundred dollars, and some records, files, and memoranda intended and purporting to show the business standing of some persons and firms doing business in said Kansas City and vicinity, and that the same was so inaccurate and so loosely and unsystematically prepared and arranged as so be of no value whatever.

13 Defendant was, at the date aforesaid, bound under contracts to furnish commercial reports to divers persons and firms for different periods after said date who had paid plaintiff in full for furnishing such reports, and it was agreed between plaintiff and defendant, though not contained in said written contract, that plaintiff, as defendant's superintendent, might, at defendant's expense, furnish commercial reports to such persons and firms to whom he was so bound without any personal expense to him whatever, and that plaintiff should and would use his said property in and about defendant's business without any costs or expense to defendant. And defendant says that, in pursuance of said mutual agreement, it did, through plaintiff, as its superintendent and in discharge of plaintiff's existing personal contracts, at its own expense, and without any other recompense whatever, except the use

of plaintiff's said property, furnish, during the time plaintiff was its superintendent under said employment, commercial reports to the persons and firms to whom plaintiff was so bound, and the furniture and other property of plaintiff was kept and some use thereof made by plaintiff as defendant's superintendent in its said office. And defendant says that plaintiff, on the second day of February, 1880, voluntarily abandoned and gave up his said position as defendant's superintendent, and that defendant then notified and requested plaintiff to remove his said property from defendant's premises, and that plaintiff did remove his said furniture, leaving his other property, which was utterly worthless and of no value whatever. And defendant says that it never in any manner purchased said property of plaintiff, or promised or become liable to pay him therefor, and that he is and has, at all times, been at liberty to have the same. Wherefore defendant prays judg-
14 ment.

2. For a second and further defence to plaintiff's said action and by way of counter-claim thereto, defendant states that the employment by defendant of plaintiff as its superintendent, as mentioned in the petition, was made by and under an agreement in writing, dated June 5th, 1879, and signed by plaintiff and defendant. Said agreement in writing is herewith filed and marked exhibit A. In and by said agreement plaintiff bound himself to act as defendant's superintendent of its office at Kansas City, Missouri, for a term beginning on said fifth day of June and ending May 1st, 1880, devoting his entire time, influence, and talents to the prosecution of defendant's said business and conforming to defendant's instructions for the general conduct of said business, and defendant agreed to pay plaintiff a monthly salary of one hundred dollars for such services. In pursuance of said contract plaintiff entered upon said employment and continued therein until February 2d, 1880, when he voluntarily abandoned and resigned said position. Defendant states that as such superintendent it was plaintiff's duty to collect the money due to defendant from time to time from the customers of the said office at Kansas City, and account and pay for the same to defendant, and that on said second day of February, 1880, the plaintiff had in his hands and under his control the sum of eleven hundred and four dollars and eighteen cents of the moneys of defendant so collected by him after paying to himself his salary in full, and that the plaintiff did convert to his own use all of said moneys; that the defendant demanded the same of the plaintiff, who failed and refused to account for or
15 pay over said moneys or any part thereof. Wherefore defendant prays judgment against plaintiff for said sum of eleven hundred and four dollars and eighteen cents, and that the same or so much thereof as may be necessary may be set off against any amount that may be allowed in favor of the plaintiff upon his petition, if any such there be, and that judgment be rendered in favor of defendant for the balance thereof.

3. For a further and third defence to plaintiff's said action, and by way of a counter claim thereto, defendant states that the employ-

ment by defendant of plaintiff as its superintendent mentioned in the petition was made by and under an agreement in writing, dated June 5th, 1879, and signed by plaintiff and defendant. Said agreement in writing is herewith filed and marked Exhibit "A." In and by said agreement plaintiff bound himself to act as defendant's superintendent of its office at Kansas City, Missouri, for a term beginning on said fifth day of June and ending on May 1st, 1880, devoting his entire time, influence, and talents to the prosecution of defendant's said business, and conforming to the defendant's instructions for the general conduct thereof, for a monthly salary of one hundred dollars therein agreed to be paid plaintiff by defendant; and further that he, the plaintiff, would so conduct the business of said office that the legitimate expenses thereof while so under his charge should not exceed its legitimate receipts. That the plaintiff entered upon said employment and continued therein until the second day of February, 1880, when plaintiff voluntarily abandoned and resigned his said position and employment, and that during said time defendant fully kept and performed all the terms and conditions of said agreement on its part to be kept and per-
16 formed; and defendant says that the plaintiff failed and neglected to keep or perform the terms of said agreement on his part to be kept and performed, and failed to so conduct the business of said office that the legitimate expenses of said office did not exceed the legitimate receipts thereof, but did so misconduct and mismanage said business that its legitimate expenses did exceed its legitimate receipts by the sum of eighteen hundred and thirty-three dollars and forty-two cents; by reason thereof defendant has been damaged in the sum of two thousand dollars, for which defendant prays judgment, and that the same, or so much thereof as may be neeessary, may be set off against any amount that may be found in favor of the plaintiff on account of the matters stated in the petition, it any such there be, and that judgment be rendered for the balance thereof in favor of defendant, and against the plaintiff, and for its costs.

GAGE & LADD,
Attorneys for Defendant.

And afterwards, to wit, on the —— day of ——, A. D. 188–, the following replication was filed, to wit:

In the United States Circuit Court, Western Div., Western District of Missouri.

FORRESTER H. HIGGINS, Plaintiff,
against
THE BRADSTREET COMPANY, Defendant.

Now comes the plaintiff and by leave of court files this, his reply, to the answer of defendant, and says that he denies that the records, files, and memoranda kept by plaintiff in his office in Kan-
17 sas City, Missouri, and which are referred to in defendant's answer, were inaccurate or loosely or unsystematically pre-

pared and arranged, so as to be of no value whatever as charged in defendant's answer, and, on the contrary, plaintiff avers that said records, files, and memoranda were accurate and reliable, and were carefully and systematically prepared, and were of great value. Plaintiff admits that at the date of the contract between plaintiff and defendant, referred to in the answer, he, plaintiff, was bound under contracts to furnish commecial reports to divers persons and firms for different periods, who had paid plaintiff in full for furnishing such reports, but plaintiff denies that it was agreed or understood in any manner between plaintiff and defendant that plaintiff as defendant's superintendent might, at defendant's expense, furnish commercial reports to such persons and firms, and that plaintiff should and would use his said property in and about defendant's business without any cost or expense to defendant. Plaintiff says it is true that it was understood and agreed that he, plaintiff, should furnish commercial reports to the persons and firms he was under obligation to until his contracts with such persons were fulfilled, but plaintiff says that at the same time there were due to him divers unpaid subscriptions by persons or firms in Kansay City, Missouri, amounting in the aggregate to about two thousand dollars, which it was understood and agreed between plaintiff and defendant should be collected by plaintiff as defendant's superintendent, and sufficient thereof should be used in defendant's business and appied to defendant's use in its said business to pay defendant for the privi-

lege of furnishing commercial reports to plaintiff's old cus-
18 tomers, and the remainder of said subscription should belong to plaintiff. And plaintiff says there was no other, or further consideration agreed upon or understood between plaintiff and defendant, for or on account of plaintiff's furnishing reports and information to his former subscribers and patrons, to whom he was indebted. And plaintiff further says that the whole of his said uncollected subscriptions so outstanding when plaintiff entered the service of defendant, were subsequently to the amount of over two thousand dollars collected and used by plaintiff, in and about the business of and for the benefit of the defendant, and plaintiff says that the information and reports which he was permitted to and did furnish, as aforesaid, to his said former patrons and customers, through the office of defendant, did not exceed in value the sum of ——— dollars, and the balance collected and used in defendant's business, as aforesaid, is still due and owing to plaintiff from defendant.

Plaintiff admits that on or about the 2d day of February, 1880, he voluntarily gave up his said position as defendant's superintendent, but plaintiff denies that defendant at that time, or at any other time, notified or requested plaintiff to remove his said property from defendant's premises, and defendant denies that he ever at any time removed his furniture, or any part of his said property, from defendant's premises. And plaintiff says that at the time he resigned his said position as superintendent of defendant, his, plaintiff's, said records, files, information, memoranda, &c., had become practically of little or no value by reason of the fact that all, or

about all, of the information contained in said records, files, memoranda, &c., and which alone rendered the same valuable,
19 had been transcribed by defendant into the new records and files of defendant, and had thus been absorbed and converted by defendant to its own use, and it had thus become impossible for plaintiff to remove the same, or to use the same with any profit to himself. And plaintiff further says that at said time the defendant had destroyed the greater portion of plaintiff's furniture and the remainder thereof is still in defendant's possession.

Plaintiff further says he denies specifically each and every allegation in defendant's said answer contained, except as is herein admitted. Wherefore plaintiff prays judgment as in his petition.

2d. Plaintiff replying to defendants second defence and counterclaim says, he admits the employment of plaintiff by defendant as stated therein, and admits he remained in defendant's employ, as stated, till about the second day of February, 1880, when he resigned his said position. But plaintiff says by the terms of the contract referred to in and filed with defendant's answer, plaintiff had the right to resign his position at any time by giving defendant one month notice of his intention to resign, which plaintiff did. Plaintiff admits that it was his duty to collect money due to defendant from time to time from the customers of its said office at Kansas City, and plaintiff admits that on said second day of February, 1880, he had in his house and under his control about the sum of $1,104.18 which plaintiff had collected and received as defendant's superintendent, and plaintiff admits that he kept and retained the same; but he further says that the same was no more than was due to him on account of money collected from plaintiff's
20 former customers and subscribers, and which belonged to plaintiff, and had, therefore, been used in and about the business of defendant. And the same was much less than was due plaintiff from defendant on account of the matters and things sued for in plaintiff's petition. And plaintiff says he admits that defendant is entitled to credit for the money so retained by him upon whatever may be found due plaintiff upon his petition.

Plaintiff further answering said count, says he denies specifically each and every allegation contained in said count, not herein admitted to be true.

3rd. Plaintiff answering the third defence and counterclaim in defendant's answer, says he admits the employment of plaintiff by defendant, mentioned in the petition, was made by and under an agreement in writing as stated in said count of said answer, and that the said agreement is filed with said answer. Plaintiff admits that the terms and conditions of said agreement, so far as they are stated, are stated correctly, but plaintiff says it was further provided in said agreement, that plaintiff might resign or cease to act as defendant's superintendent at any time, by giving defendant one month's notice of his intention to do so. Plaintiff admits that he entered upon and continued in the employment of defendant until about the second day of February, 1880, when he voluntarily resigned his said position, but plaintiff says he first gave the one

month's notice to defendant of his intention to resign, in accordance with the terms of said contract, and plaintiff denies that while in defendant's employ he so conducted the defendant's said business as to cause the legitimate expenses of the business to exceed the legitimate receipts of the same. Plaintiff denies that during said time the defendant kept or performed all the conditions of said contract on its part to be kept and performed, and he denies that he
21 failed or negleted to keep or perform any of said agreement on his part to be kept and performed. And he denies that he so conducted or mismanaged the business of defendant as to cause the legitimate expenses to exceed the legitimate receipts by the sum of $1,833.42 or any other sum. And on the contrary plaintiff avers that if the expenses of either establishing or running and conducting said business in any manner exceeded the legitimate receipts, such expenses were incurred by defendant or those under its employ and direction other than plaintiff, and were incurred without the direction of plaintiff, and without any reference to or consultation with him. Plaintiff further answering said count in said answer, denies each and every allegation therein contained not hereinbefore specifically admitted.

KARNES & ESS,
C. L. DOBSON,
Att'ys for Def't.

And afterwards, to wit, at the October term, 1880, of said court, and on the 29th day of October, A. D. 1880, the following entry appears of record, to wit:

FORRESTER H. HIGGINS
against } 189.
THE BRADSTREET CO.

By consent it is ordered that this cause be continued.

And afterwards, at the May term, 1881, of said court, and on the 10th day of June, 1881, the following entry of record appears, to wit:

22 FORRESTER H. HIGGINS
against } 189.
THE BRADSTREET CO.

By consent of parties it is ordered that this cause be continued.

And afterwards, to wit, at the October term of said court, and on the 22d day of October, 1881, the following entry appears of record, to wit:

FORRESTER H. HIGGINS
against } 189.
THE BRADSTREET CO.

By consent of parties it is ordered that this cause be continued.

And afterwards, to wit, at the May term, 1882, of said court, and on the 16th day of May, 1882, the following entry appears of record, to wit:

FORRESTER H. HIGGINS
against } 189.
THE BRADSTREET CO.

This day come the parties, by their attorneys, the plaintiff, by J. V. C. Karnes & C. L. Dobson, and the defendants, by Gage & Ladd, and this cause being regularly called for trial, it is ordered that a jury come, to wit: J. M. Cockrell, A. F. Owens, W. B. Armstrong, Isaac B. Blackburn, Edward Evans, Wm. E. McBride, John Hobart, George Peck, W. S. Starr, R. A. Hewitt, T. S. Franklin, Louis J. Williams, twelve good and lawful men, who were duly sworn to try the issues herein; thereupon, by consent of parties and leave of court, defendant files amended answer and plaintiff files
23 reply thereto, and the hearing of this cause is proceeded with, and not being completed at the hour of adjournment further proceedings are postponed until to-morrow morning.

Said amended answer of defendant is in words and figures as follows, to wit:

In the United States Circuit Court, Western Division of the Western District of Missouri. October Term, 1881.

FORRESTER H. HIGGINS, Plaintiff,
vs.
THE BRADSTREET COMPANY, Defendant.

Defendant, for amended answer to plaintiff's petition, denies each and every allegation therein contained not hereinafter specifically admitted.

Defendant admits that it was, at all the dates mentioned in the petition, a corporation doing and carrying on the usual business of a mercantile agency throughout the United States, and having offices at convenient places, and that on or about the fifth day of July, 1879, it established an office for the transaction of business in the city of Kansas, in the State of Missouri, and has ever since maintained the same and carried on its usual business therein, and that on said fifth day of July, 1879, it employed the plaintiff as its superintendent of its said office by an agreement in writing of that date, signed by plaintiff and defendant, and filed by defendant and marked Exhibit A, with the answer herein, and that under said agreement plaintiff acted as defendant's superintendent until the second day of February, 1880, when he voluntarily abandoned and resigned his said position. Defendant admits that it succeeded to certain business of plaintiff in the manner following and no other:

24 Prior to the fifth day of July, 1879, the plaintiff, being the proprietor of branch of a mercantile agency at said city of Kansas, had entered into contracts with divers persons and firms for services to be rendered them for terms which were on said 5th day

of September unexpired, and said contracts remained in part unperformed. Upon some of said contracts plaintiff had collected his pay in advance in full, and upon some of said contracts plaintiff had not collected his pay in full for the portions of said terms then expired, and that plaintiff was then unable to further perform his said contracts by reason of the failure and suspension of business of the mercantile agency of which he had been a branch, and that, though not contained in said written agreement, it was as a part of said transaction of the 5th day of July, 1879, agreed between plaintiff and defendant, that defendant would, at its own expense, carry out in its name, through plaintiff, as its superintendent, all of plaintiff's aforesaid unexecuted contracts, receiving therefor whatever might be collected by plaintiff upon said contracts, and that defendant did so execute and perform plaintiff's said contracts.

For a further and second defence to plaintiff's action, and by way of counter-claim thereto, defendant states that the employment by defendant of plaintiff as its superintendent, as mentioned in the petition was made by and under an agreement in writing, dated June 5th, 1879, and signed by plaintiff and defendant. Said agreement in writing is filed with the answer in this case, and marked Exhibit A. In and by said agreement plaintiff bound himself to act as defendant's superintendent of its office at Kansas City, Missouri, for a term beginning on said fifth day of June and
25 ending May 1st, 1880, devoting his entire time, influence, and talents to the prosecution of defendant's said business, and conforming to defendant's instructions for the general conduct of said business, and defendant agreed to pay plaintiff a monthly salary of one hundred dollars for such services. In pursuance of said contract, plaintiff entered upon said employment, and continued therein until February 2d, 1880, when he voluntarily abandoned and resigned his said position. Defendant states that as such superintendent it was plaintiff's duty to collect the moneys due to defendant from time to time from its customers of its said office at Kansas City, and account for and pay the same to defendant, and that on said second day of February, 1880, the plaintiff had in his hands and under his control the sum of eleven hundred and four dollars and eighteen cents of the moneys of defendant so collected by him, after paying to himself his salary in full, and that the plaintiff did convert to his own use all of said moneys; that the defendant demanded the same of the plaintiff, who failed and refused to account for or pay over said moneys, or any part thereof.

Wherefore defendant prays judgment against plaintiff for said sum of eleven hundred add four dollars and eighteen cents, and that the same, or so much thereof as may be necessary, may be set off against any amount that may be allowed plaintiff upon his petition, if any such there be, and that judgment be rendered in favor of defendant for the balance thereof.

3. For a further and third defence to plaintiff's said action, and by way of counter-claim thereto, defendant states that the employment by defendant of plaintiff as its superintendent, mentioned in the petition, was made by and under an agreement in writing

26 dated June 5th, 1879, and signed by plaintiff and defendant. Said agreement in writing is filed with the answer herein, and marked Exhibit A. In and by said agreement plaintiff bound himself to act as defendant's superintendent of its office, at Kansas City, Missouri, for a term beginning on said fifth day of June, and ending on May 1st, 1880, devoting his entire time, influence, and talents to the prosecution of defendants said business, and conforming to defendant's instructions for the general conduct thereof, for a monthly salary of one hundred dollars, therein agreed to be paid plaintiff by defendant; and further, that he, the plaintiff, would so conduct said business of said office that the legitimate expenses thereof, while so under his charge, should not exceed its legitimate receipts. That plaintiff entered upon said employment and continued therein until the second day of February, 1880, when plaintiff voluntarily abandoned and resigned his said position and employment, and that during said time defendant fully kept and performed all the terms and conditions of said agreement on its part to be kept and performed. And defendant says that plaintiff failed and neglected to keep or perform the terms of said agreement on his part to be kept and performed, and failed to so conduct the business of said office that the legitimate expenses thereof did not exceed the legitimate receipts, but did so misconduct and mismanage said business that its legitimate expenses did exceed its legitimate receipts by the sum of eighteen hundred and thirty-three dollars and forty-two cents, by reason whereof defendant has been damaged in the sum of two thousand dollars, for which it prays judgment, and that the same or so much thereof as may
27 be necessary may be set off against any amount that may be found in favor of plaintiff upon his petition herein, if any such there be, and that judgment be rendered for the balance thereof in favor of defendant and against the plaintiff, and for its costs.

GAGE, LADD AND SMALL,
Att'ys for Defendant.

And the said amended reply to the amended answer is in words and figures as follows, to wit:

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

F. H. HIGGINS, Pl'ff, *vs.* THE BRADSTREET COMPANY, Def't.

The plaintiff for reply to the first defence as set up in defendant's answer denies each and every allegation therein contained not hereinafter specifically admitted, and states the facts to be, that at the date of the contract between the plaintiff and defendant referred to in the answer, he, plaintiff, was bound under contracts to furnish commercial reports to divers persons and firms for different periods who had paid plaintiff in full for furnishing such reports, and that it was understood and agreed, though not contained in said contract in writing, that he, plaintiff, should furnish commercial reports to

the persons and firms he was under obligations to, until his contracts with such persons were fulfilled, but plaintiff says that at the said times there was due to him from divers unpaid subscriptions by persons and firms in Kansas City, Missouri, amounting in
28 the aggregate to about two thousand dollars, which it was understood and agreed between plaintiff and defendant, should be collected by plaintiff as defendant's superintendent, and sufficient thereof should be used in defendant's business and applied to defendant's use in its said business to pay defendant for the privilege of furnishing commercial reports to plaintiff's old customers, and the remainder of said subscriptions should belong to plaintiff, and plaintiff says there was no other or further agreement between plaintiff and defendant for or on account of furnishing reports and information to the plaintiff's former subscribers and patrons to whom he was indebted; and plaintiff further says that the whole of his said uncollected subscriptions so outstanding when plaintiff entered the service of defendant were subsequently to the amount of over two thousand dollars, collected and used by the plaintiff in and about the business, of and for the benefit of the defendant, and plaintiff says that the information and reports which he was permitted to furnish as aforesaid to his said former patrons and customers through the office of defendant, did not exceed in value the sum of six hundred dollars, and the balance collected and used in defendant's busines as aforesaid is still due and owing to plaintiff by the defendant; wherefore plaintiff asks judgment as in petition.

2d. Plaintiff replying to defendant's second defense and counter claim says he admits the employment of plaintiff by defendant as stated therein, and he admits that he remained in defendant's employ, as stated, till about the 2d day of February, 1880, when he resigned his said position. But plaintiff says by the terms of the contract referred to, and filed with defendant's answer, plaintiff had the
29 right to resign his position at any time by giving defendant one month notice of his intention to resign, which plaintiff did. Plaintiff admits that it was his duty to collect the money due to the defendant from time to time from the customers of its said office at Kansas City; and plaintiff admits that on said 2d day of February, 1880, he had in his hands and under his control about the sum of $1,004.18, which plaintiff had collected and received as defendant's superintendent; and plaintiff admits that he kept and retained the same, but he further says that the same was no more than was due to him on account of money collected from plaintiff's former customers and subscribers, and which belonged to plaintiff and had theretofore been used in and about the business of defendant, and the same was much less than was due plaintiff from defendant on account of the matters and things sued for in plaintiff's petition. And plaintiff says he admits that defendant is entitled to credit for the money so retained by him upon whatever may be found due plaintiff upon his petition. Plaintiff further answering said count says he denies specifically each and every allegation therein contained not herein admitted to be true.

3d. Plaintiff, answering the third defense and counter claim in

defendant's answer, says he admits the employment of plaintiff by defendant, mentioned in the petition, was made by and under an agreement in writing as stated in said count of said answer, and that the said agreement is filed with the said answer. Plaintiff admits that the terms and conditions of said agreement, so far as they are stated, are stated correctly, but plaintiff says that it was further provided in said agreement that plaintiff might resign or cease to act as defendant's superintendent
30 at any time by giving defendant one month's notice of his intention so to do. Plaintiff admits that he entered upon and continued in the employment of defendant until about the second day of February, 1880, when he voluntarily resigned his said position; but plaintiff says he first gave the one month's notice to defendant of his intention to resign, in accordance with the terms of said contract. And plaintiff denies that while in defendant's employ he so conducted the defendant's said business as to cause the legitimate expenses of the business to exceed the legitimate receipts of the same. Plaintiff denies that during said time that the defendant kept or performed all the conditions of said contract on its part to be kept and performed, and he denies that he failed or neglected to keep or perform any of the conditions of said agreement on his part to be kept and performed. And he denies that he so conducted or mismanaged the business of defendant as to cause the legitimate expenses to exceed the legitimate receipts by the sum of $1,833.42, or any other sum; and on the contrary, plaintiff avers that if the expenses of either establishing or running and conducting said business in any manner exceeded the legitimate receipts, such expenses were incurred by the defendant or those under its employ and direction other than plaintiff, and without any reference to or consultation with him. Plaintiff further answering said count in said answer, denies each and every allegation therein contained not hereinbefore specifically admitted.

KARNES & ESS,
C. L. DOBSON,
Att'ys for Pl'ff.

31 And afterwards, to wit, at the regular term of said court, and on the 17th day of May, A. D. 1882, the following entry appears of record, to wit:

FORRESTER H. HIGGINS
against } 189.
THE BRADSTREET COMPANY.

This day again come the parties by their attorneys, and the jury sworn to try this cause as on yesterday, and, after the hearing of further testimony, proceedings are postponed until to-morrow morning for further hearing.

And afterwards, at said term and on the 18th day of May, 1882, the following further proceedings were had, to wit:

FORRESTER H. HIGGINS
against
THE BRADSTREET COMPANY. } 189.

This day come again the parties, by their attorneys, and the jury sworn to try this cause, as on yesterday; thereupon the hearing of evidence is completed and the premises are argued by counsel, and the hour of adjournment having arrived, further proceedings are postponed till to-morrow morning.

And afterwards, at said term of said court, and on the 19th day of May, 1882, the following entry appears of record, to wit:

FORRESTER H. HIGGINS
against
THE BRADSTREET COMPANY. } 189.

This day again come the parties, by their attorneys, and the
32 jury sworn to try this cause, as on yesterday, and thereupon the issues herein are submitted to the jury upon the charge of the court, and the jury having retired to consider what verdict they shall render in the premises, after due consultation return into court the following verdict, to wit: "We, the jury, find for the plaintiff in the sum of three thousand three hundred thirty-three dollars and ninety-two cents, ($3,333.92.)—Wm. S. Starr, foreman."

It is therefore considered by the court that the plaintiff, Forrester H. Higgins, recover against the defendant, The Bradstreet Company, the said sum of three thousand three hundred and thirty-three dollars and ninety-two cents, ($3,333.92,) so found to be due, with his costs, and have thereof execution.

And on the same day, to wit, the 19th day of May, 1882, the following paper was filed with the clerk of said court, to wit:

The defendant would like to be understood as excepting to the charge of the court in every particular thereof in such manner and form as may be stated hereafter, at a time when the business of the court will not be interrupted, and also to the refusal of the court to charge as requested by the defendant.

GAGE, LADD AND SMALL,
For Defendant.

And afterwards, to wit, at said term of said court, and on the 23d day of May, 1882, the following entry appears of record, to wit:

33 FORRESTER H. HIGGINS
against
THE BRADSTREET COMPANY. } 189.

This day comes the defendant, by its attorneys, and filed motion for new trial herein, and also takes leave to file bill of exceptions by Monday next.

34 And afterwards, to wit, on the 5th day of June, 1882, and at a regular term of said court, the following entry appears of record, to wit:

FORRESTER H. HIGGINS
against
THE BRADSTREET COMPANY. } 189.

This day come the parties by their attorneys, the plaintiff by C. L. Dobson, and the defendant by John C. Gage; whereupon the motion for a new trial herein is argued by counsel and submitted, and the court takes the same under advisement. Briefs to be filed in twenty (20) days.

And afterwards, in vacation of said court, and on the 3d day of October, A. D. 1882, the following entry appears of record, to wit:

F. H. HIGGINS
against
THE BRADSTREET COMPANY. } 189.

This day a stipulation of parties is filed herein as to bill of exceptions.

35 Which said stipulation is in words and figures as follows, to wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri. May Term, A. D. 1882.

FORRESTER H. HIGGINS, Plaintiff
vs.
THE BRADSTREET COMPANY, Defendant.

It is agreed that the defendant may file its bill of exceptions in this cause at any time during the next term of court, to be begun and held on the third Monday of October, A. D. 1882, and that the court or judge thereof may make an order to that effect.

KARNES & ESS,
C. L. DOBSON,
Atty's for Pl'ffs.

And afterwards, at the regular October term of said court, and on the 23d day of October, 1882, the following entry appears of record, to wit:

FORRESTER H. HIGGINS, Plaintiff
against
THE BRADSTREET COMPANY. } 189.

It is ordered by the court that the motion for a new trial heretofore submitted in the above entitled cause be denied.

36 And afterwards, to wit, at an adjourned term of said court, and on the 16th day of December, A. D. 1882, the following entry appears of record, to wit:

FORRESTER H. HIGGINS
against
THE BRADSTREET COMPANY. } 189.

This day comes the defendant by its attorneys and presents to the court a bill of exceptions, and prays the court to sign and seal the same, and thereupon the said bill of exceptions is signed and sealed by the court and made a part of the record herein.

And there is also presented to the court a bond for a writ of error herein, and upon consideration of the premises the court doth approve said bond, allow a writ of error in the above-entitled cause, & sign a citation therein.

And comes the plaintiff by his attorneys and files his objections to the above proceedings as to allowance of writ of error.

And the said bill of exceptions is in words and figures as follows, to wit:

In the United States Circuit Court, Western Division of the Western District of Missouri.

FORRESTER H. HIGGINS, Plaintiff,
vs.
THE BRADSTREET COMPANY, Defendant.

Be it remembered that at the May term, 1882, of this court the following proceedings were had and made in the above-entitled cause, tow it, said cause coming on for trial before a jury, the
37 plaintiff, Forrester H. Higgins, on his own behalf, testified as follows:

That from the fall of the year 1869 to about June 5th, 1879, he, the plaintiff, and Henry H. Craig, as copartners under the firm name of Higgins & Craig, were the owners of and engaged in conducting and operating a mercantile agency office at Kansas City, Missouri. That until about November, 1878, said firm had been operating their office as a branch of McKillops & Co.'s mercantile agency, which had similar offices in all the principal cities in the United States and Canada. About November, 1878, McKillops & Co.'s failed, and from that time until June, 1879, the former branch offices of McKillops & Co.'s, in several of the principal cities, formed an arrangement under which they carried on their business. On the 5th of June, 1879, Mr. Craig, on behalf of Higgins & Craig, made a contract in St. Louis with the Bradstreet Company, the defendant acting through W. C. Day, its St. Louis agent, and returned to Kansas City on that night, bringing with him the contract. On the next day Higgins & Craig issued what they called change sheets, on the bottom of which they printed a notice stating that after that day the office would be run under the name of the Bradstreet Company, but otherwise there would be no change, and the office was so run for some two weeks, when a letter was received from Mr. Day stating that he had some difficulty in explaining the contract that had been executed to Mr. Clark, the president of the company, and requesting the witness to go to New York and see Mr. Clark

about it. Witness accordingly went to New York, leaving his partner, Craig, in charge of the office; arrived in New York; from the 15th to the 20th of June, met Mr. Clark, the president of the company, who informed him that the company had no right, under its charter, to make such a contract as had been executed in St. Louis. The witness proposed to
38 Mr. Clark that he would hold the company to its contract, but was informed that there were plenty of ways to get around it. The parties then negotiated, and the result was the contract in writing filed with defendant's answer. Mr. Clark at first objected to paying anything for the stuff Higgins & Craig had in their office, and said he would not allow them anything for it, but finally said that the company would take it at a reasonable sum for what they had in their office that the company could use. The written contract was not positively closed up; the witness had no authority to bind Mr. Craig by the contract, and it was agreed that he should return to Kansas City and telegraph if Mr. Craig assented to it. The witness returned, and Mr. Craig objected to this new contract, and witness bought out Mr. Craig's interest in the agency and records and reports. These reports were very extensive, had been collected at great expenses, and when turned over to the Bradstreet Company by witness as its superintendent were of the value of eight thousand dollars. The value of the office furniture was merely nominal; perhaps, one hundred dollars. Higgins & Craig had about one hundred and thirty paying subscribers who were turned over. On these subscriptions there was uncollected and collectable twenty-one hundred dollars.

When the Bradstreet Company put witness in as superintendent it furnished him with no material or information to furnish subscribers except these McKillop records. Prior to that time the Bradstreet Company had *had* no office at Kansas City; to open an office and conduct it, it was necessary to have that or similar information.

About August, 1879, Mr. Chittendon, the auditor of the
39 company, came to Kansas City and began exercising authority over the business, giving instructions to combine the new information that the office was receiving with the old reports into new reports. That work was going on constantly while witness remained in the office as superintendent. Mr. Chittendon was there from three to five weeks. He bought new desks and cases to keep the material in. Witness resigned his office as superintendent, February 1st, 1880.

Upon cross-examination, the witness stated that while acting as superintendent of defendant, although greatly in need of money and hard pressed by debts, and believing that defendant was entirely responsible and able to pay, and that defendant owed him eight thousand dollars for these reports, he had never at any time asked from the company, through its agents, with whom he was in constant communication, payment of this debt or for any settlement thereof, or taken any invoice of the property on account of which he claimed this debt existed. That his reason for resigning his

office was that he thought the company was crowding him out; that he saw them constantly absorbing the information contained in his old reports into their new reports; that he understood that the company had bought the old reports and had a right to do whatever it pleased with them, but still he felt that it had the advantage of him, and he therefore resigned. At the time I resigned there was about thirteen hundred dollars to the credit of the Bradstreet Company in the bank. I drew it out before I resigned; I have never returned it to them. I thought I would wait till a settlement was made. I did not consider it their money. I had entered it on their books; the entry shown on the books is my handwriting. On the 31st of December, 1879, I owed the company on my salary account $20.54. During the month of January, 1880, according to this book, I seem to have drawn on my salary account $868.43. I knew that there was not this amount due me. I had the money and I wanted it to go on the book charged to something, and so I charged [it] to myself. Witness again further testified to the character and value of his records.

Henry H. Craig, on behalf of plaintiff, testified that [he] was formerly a partner in the firm of Higgins & Craig, and that on June 5th, 1879, he executed the contract in St. Louis with the Bradstreet Company. Afterwards Mr. Higgins wrote for some books or material, and there was some hitch about it. Mr. Day then wrote or telegraphed from St. Louis that Higgins had better go to New York to see Mr. Clark, so he went. He returned and told me the result of his trip to witness. Witness refused to ratify the New York contract. Higgins then bought witness out, paying two thousand dollars in his notes, and agreeing to pay the debts of the concern, and turning over to witness the collection business, which witness regarded as valuable. After receiving assurance from New York that he could depend upon retaining the collection business, witness made the trade. In the opinion of witness, the reports then in the office were worth $6,000. Witness then transferred to Higgins his one-half interest in them for $2,000 in Higgins notes, which he still holds, and Higgins' one-half of the collection business, which he valued at $1,000.

There was also further evidence tending to show that while plaintiff was acting as defendant's superintendent the old McKillop & Co. reports were used in conjunction with new information to make up a new system of reports for the office, and that the old McKillop & Co. reports while used by Higgins & Craig were a reliable and valuable set of reports.

The defendant, on its behalf, offered and read in evidence the contract annexed to the answer and referred to therein, which was as follows:

This agreement, made this 5th day of June, A. D. 1879, between the Bradstreet Company, of the city of New York and elsewhere, party of the first part, and Forrester H. Higgins, of Kansas City, Mo., party of the second part, witnesseth:

1. The said the Bradstreet Company, party of the first part, by its president, Charles F. Clark, hereby employ the said party of the

second part as superintendent for the term from June 5th, 1879, to May 1st, 1880, it being the intention of the contracting parties to renew this agreement from year to year so long as mutually satisfactory, and hereby agree, on condition of his keeping and observing the terms of this agreement, to pay him one hundred [dollars] ($100) per month, payable monthly, and also such proportion of the net profits as hereinafter agreed, as the facts may warrant.

2. And the said the Bradstreet Company, party of the first part, agrees to pay the said party of the second part an additional compensation equal to —— the net profits of the business properly belonging to and accruing from the said Kansas City office during the term aforesaid, provided any there be, it being under-
42 stood and agreed that the net profits, so called, of the business shall be determined by deducting all legitimate expenses arising from the conduct of the business from the net cash receipts from the subscriptions taken in the usual and regular way, and at prices approved by the said party of the first part; the said net profit to be ascertained and paid at the expiration of the term, as above stated, except that should this agreement, from any cause, be sooner determined, then, in such event, the profit of the business covering the full term shall be ascertained as though it had continued, but the division of the profits shall be prorated for such time as this contract shall continue and be fulfilled.

3. The said Forrester H. Higgins, party of the second part, in consideration of the terms and payment above stated, hereby agrees to enter the employment of the said party of the first part in the capacity of superintendent, and during said employment agrees to devote his whole time, influence, and talents, during business hours, to the successful prosecution of the business of the said party of the first part, and conform to the instructions already established for the general conduct of the business, or that may be hereafter from time to time established by said party of the first part.

4. And the said Forrester H. Higgins, party of the second part, hereby covenants and agrees to and with the said party of the first part that he will not communicate in any manner any information which he may derive from the written or printed reports or sheets of the said party of the first part concerning the character,
43 credit, or standing of any person or persons, nor communicate to any person or persons whatsoever, any information concerning the business relations existing between the party of the first part and its patrons, or with its various offices, during the continuance of this agreement, or at any subsequent time, except in the legitimate conduct of the business and as he may be directed by the said party of the first part, or its proper representative.

5. And the said Forrester H. Higgins, party of the second part, covenants and agrees that he will so conduct the business of the said office, while under his charge, that the legitimate expenses shall not exceed the legitimate receipts.

6. It is mutually agreed that the failure of either party to keep the terms of this agreement shall make it null and void.

7. It is also mutually agreed that this agreement may be dissolved by the party of the first part allowing to the party of the second part one month's salary, or upon the party of the second part giving thirty days' written notice to the part of the first part.

In witness whereof, the said parties have hereunto set their hands and seals the day and year above written.

CHARLES F. CLARK, *Pres't.*
FORRESTER H. HIGGINS.

Also evidence tending to show that the reports of Higgins and Craig, known as the McKillop reports, were of no value
44 whatever, and that the same were not made use of by defendant in making up its new reports while plaintiff was acting as its superintendent.

CHARLES F. CLARKE, for defendant, testified that he was the president of the Bradstreet Company, and as such executed on the part of the company the contract read in evidence; that in the interview had with plaintiff at that time the witness stated to the plaintiff that the former contract executed by Mr. Day in St. Louis was entirely unauthorized, and that the company entirely repudiated it, and that this contract was then entirely abandoned and negotiations had which resulted in the new contract: that when the contract was signed the plaintiff stated that he had no power to complete such an arrangement without consulting his partner, Craig, in Kansas City, and that he would at once go to Kansas City & consult with Craig, and notify witness of the result, and that on July 17 thereafter witness received the following telegraphic dispatch:

"KANSAS CITY, MO., *July* 16, 1879.

"CHARLES F. CLARKE,
"*Pres't Bradstreet Company, New York:*

"The contract made by Higgins and yourself at New York is approved. Send books by express.

"F. H. HIGGINS.
"H. H. CRAIG."

At the same time when the contract was signed the plaintiff spoke of his office fixtures, and information in the shape of reports, and was informed by witness that the company would not in any event purchase reports of that nature; that it could not permit them
45 to be used in the compilation of its printed volumes, and that the company would supply the office with fresh material and reports at the earliest possible moment from its own resources. That no agreement or promise was made to plaintiff when in New York in June, 1879, to pay any sum whatever for the reports, records, or material or information contained in the office at Kansas City; that said Clarke did then say to said Higgins that if there was any furniture in said office which the company desired it would purchase the same from him, but expressly warned Higgins that the information contained in his McKillop & Co. reports were not such as the company would permit the use of in making up

their regular volume, and that it would supply the Kansas City office with reports and information from its own resources at the earliest possible moment, and would in no event purchase that in the office at Kansas City at that time. There was further evidence tending to confirm the statements of the last witness, also evidence tending to show that the company did during the months of 1879, succeeding July, proceed at its own expense to supply the office at Kansas City with reports and information derived from its own resources, not using the plaintiff's reports for that purpose, also evidence tending to show that the legitimate expenses of the Kansas City office exceeded its legitimate receipts during the time plaintiff acted as its superintendent in the sum of $61.10, including plaintiff's salary of $100 per month as expenses; also that of the legitimate receipts of the office, being moneys of the defendant in the hands and keeping of plaintiff at the time of his resignation, the plaintiff took and converted to his own use, and still retains the sum of $1,162.57 over and above the amount of his salary for the
46 term, charging the same, however, to his salary account in the books, and thereby overdrawing his salary account in that sum.

In rebuttal the plaintiff offered in evidence the contract executed in St. Louis June 5th, 1879, to which defendant objected on the ground that the same was irrelevant and immaterial; but the court overruled said objection, to which decision of the court defendant at the time excepted.

Said contract was as follows:

This agreement, made the 5th day of June, A. D. 1879, by and between the Bradstreet Company, a corporation, party of the first part, and Henry H. Craig and Forrester H. Higgins, party of the second part, witnesseth, that in consideration of the mutual agreements herein contained, to be on the part of the respective parties hereto duly and faithfully performed, said parties mutually stipulate and agree as follows, to wit:

Said parties of the second part are hereby appointed and designated as the persons to have and take charge of the business and affairs of the Bradstreet Company at Kansas city, State of Missouri, for the term of this contract, which shall be for the term of ten years from the date hereof, subject to the same rules, terms, supervision, control, and conditions as those under which other offices of the said company are conducted, and subject to such changes as may hereafter be made therein, applicable to all offices of said company of the same general class as the said office at Kansas city, except as to the particulars hereinafter mentioned.

47 Said parties of the second part shall, at their own proper expense and charge, maintain and support the office of said company at Kansas city, and shall in return therefor be entitled to, and shall receive and retain to their own proper and exclusive use the entire profits of such office, of which profits and expenses they shall not be obliged to furnish the detailed accounts required of other offices of said company, but said parties of the second part shall nevertheless forthwith furnish to said company copies of all

subscriptions, contracts made after July 1, 1879, touching or relating to the business of such office, and a statement of the gross receipts and expenditures of such office at the end of each year, said parties of the second part shall and will furnish to the office of said company at Boston, St. Louis, Philadelphia, Chicago, Cin'ti, Ohio, &c., [or] New York, as the party of the first part may direct, all commercial information and full business reports as may be requested by said company of said parties of the second part from time to time during the term of this contract of and from the territory lately reported by said parties of the second part to the McKillop commercial agency; and said parties of the second part shall and will not furnish, directly or indirectly, to any other commercial agency or organization than said party of the first part any information of like or similar kind to that above agreed to be furnished to said company during the term of this contract; and said company on its part shall furnish during said period to said parties of the second part the usual commercial reports and information from other parts of the United States and Canada furnished by it to its other offices and in like manner, and shall also supply
48 said parties of the second part with all necessary blanks, including therein manifold material and reference books upon the same terms and at the same cost at which the same are or may be hereafter furnished by said company to its other similar offices in the United States or Canada, said parties of the second part hereby sell and assign absolutely to the said party of the first part all the commercial and commercial agency business records, memoranda and information now in or appertaining to the office of said parties of the second part in Kansas City and elsewhere in said territory above mentioned, together with fixtures necessary, and now used to keep and preserve the same in orderly manner.

Said parties hereto shall in good faith endeavor to make said office of said company at Kansas City a lucrative office of said company, and a valuable and reliable assistant in the general business and design of said company; and to that end the said parties of the second part agree to give by themselves or agents their attention to and supervision of the business of such office, and devote thereto all the time that may be necessary to carry out this undertaking fully on their part; to conform the management and conduct of such office to the rules or regulations of said company established for its office, except as the same may conflict with the provision of this agreement, and except that the price of subscriptions within the territory above described shall be fixed by the parties of the second part, and except that nothing herein shall be construed to effect the separate law and collective business of the said parties of the second part, which shall, however, be conducted solely on the authority and responsibil-
49 ity of said parties of the second part, and without the use therein of the name of the said party of the first part. It is further agreed that in case said parties of the second part shall faithfully comply with its terms during the ten (10) years for which the contract is entered into, that they, said parties of the

second part, shall have preference over all other persons for the appointment as agent of said party of the first part at the office at Kansas city aforesaid for any subsequent period for which said company may desire to maintain an office at said point, and said parties of the second part may substitute in their stead for the performance of the terms of this agreement during the term thereof any suitable or proper person, or persons, who may be accepted (in writing) by said company as successors to said parties of the second part herein, otherwise said parties of the second part shall not have the right of assignment of the privileges of this contract.

In testimony whereof said parties hereto have set their hands and seals hereunder on the date first herein written, said party of the first part executing these presents by its proper officer thereunto previously fully authorized and empowered by said corporation according to law.

THE BRADSTREET COMPANY. [SEAL].
W. C. DAY, *Sup't.*
HENRY H. CRAIG. [SEAL.]
FORRESTER H. HIGGINS. [SEAL.]
By H. H. CRAIG.

This was all the evidence.

50 The defendant thereupon prayed the court to instruct the jury as follows: The plaintiff, Higgins, having testified as to the making by the defendant of an express contract in New York to pay him for the records what they were worth, he cannot recover for them unless the jury believe that such contract was made; under the circumstances of this cause there can be no recovery upon any implied contract.

The court refused to so instruct the *the* jury, to which ruling and decision of the court defendant at the time excepted.

The court then charged the jury as follows:

GENTLEMEN OF THE JURY: For the purpose of enabling you to more clearly see the law applicable to the cause under consideration, it will be useful to look at its general outlines. The plaintiff, Mr. Higgins, in conjunction with Mr. Craig, a citizen of Kansas City, had, for a number of years, been engaged in organizing and building up, in connection with what has been called the McKillop mercantile agency, a business of that kind in Kansas City. They, Higgins and Craig, had accumulated, in their office, the usual records and reports for and extending over the territory testified to, the McKillop agency, spoken of in 1878, for some reason failed, and the Kansas City office of Higgins and Craig in that way lost their connection with territory outside of their own in order to supply this want. Higgins and Craig connected themselves and their office with a new Western organization, thus keeping on with the business, to what extent and with what satisfaction has been tes-
51 tified to by the patrons or customers of their office at Kansas City.

The connection with the new Western agency proving unsatisfactory, negotiations were opened with the Bradstreet agency, tho

defendant in this case, at St. Louis, and an agreement was reached by which the Higgins and Craig office, at Kansas City, became connected with the Bradstreet Company.

Before the time of entering into the agreement spoken of the Bradstreet Company had no office at Kansas City, but had one at St. Joseph, besides the one at St. Louis. By this St. Louis contract Higgins and Craig retained full charge and control of their office, except that they were to conduct it according to the regulations of the Bradstreet Company, and make certain reports. The expenses of the office were to be borne by Higgins and Craig, and they were to have all profits derived therefrom. This arrangement was to last for ten years, and preference was to be given them thereafter in any new arrangement made by the Bradstreet Company. In this St. Louis agreement of June 5th, 1879, the records and reports of the Kansas City office of Higgins and Craig became the property of the Bradstreet agency. The advantages secured to Higgins and Craig by this agreement were the keeping of the entire control of their office, obtaining a connection with the Bradstreet agency, and securing reports from all parts of the United States and Canada, and securing to themselves the increase and profits of the business, if such should take place. The advantages of the Bradstreet Company were the obtaining a foothold in Kansas City, preventing or meeting competition under more advantageous conditions, the securing of the present records and reports of the Kansas City
52 office of Higgins and Craig, and whatever advantages there might grow up after the expiration of the ten years.

Higgins and Craig at once entered upon the execution on their part of the agreement, notified their patrons and customers of the change, and advising them that thereafter their Kansas City office would be conducted as an office of the Bradstreet agency, but otherwise there would be no change. This was done soon after the 5th of June, 1879; on the 13th of July, or thereabouts, Mr. Day, the superintendent of the St. Louis office of the Bradstreet Company, who had made this contract with Higging & Craig, claiming to have authority to do so from his principal, the Bradstreet Company, advised Higgins and Craig that the Bradstreet Company, through its officers at New York, disapproved of part of the contract made by him, and suggested that Higgins should go on to New York to adjust the difficulty.

Higgins went to New York and made, among others, the written and printed contract of July 17th, known as the New York contract; the contract is nothing more or less than the ordinary contract the company usually makes with all agents, and is upon one of its printed blanks. It will be observed, however, that this contract assumes and proceeds upon the idea that the Bradstreet Company had an office at Kansas City, and as evidence shows conclusively that they had none other than the one under the contract of June 5th, known as the St. Louis contract; this St. Louis contract in the particulars not abrogated by the New York contracts, was adopted by the Bradstreet Company, and the office records and reports of the Higgins and Craig office were theirs, unless they

53 relinquished it *it*. The Bradstreet Company cannot claim the use and benefit, if any there be, under the St. Louis contract, and unless that company relinquished by and in the new agreement made in New York, any benefits coming to them by the St. Louis contract, they must pay Higgins for such benefits whatever they may be; over the written and printed New York contract there is no dispute between the parties.

This dispute arises over contracts made in New York. At the time of the making of the printed and written contract, other than this written and printed contract, Higgins claims that by these outside contracts, as I call them to distinguish them from the written and printed contract, the company through Mr. Clark, its president, agreed to comply with such contracts with subscribers as Higgins and Craig had made in Kansas City; and further that the company was to pay for records and reports in the Kansas City office.

The first part of this agreement, the assuming of liabilities to subscribers, is not denied by the company, but is confessed, and has been carried out. We have the fact here admitted by the company that there were other agreements than the written and printed one, but it is denied that payment was to be made for the records and reports, and it is asserted by Clarke in his testimony that these records were not only not to be paid for, but that they were not to be used by the company. Here the testimony conflicts, and in order to arrive at who is in the right, you will call to mind what the witnesses testify in this matter.

54 And here it is necessary to recollect how much of these contracts the witnesses, outside of Clark, testified to, in order to see whether there were not in fact two consultations, at one of which the witnesses, outside of Clark, were present, and not as to the second, which Higgins claims to have taken place, or whether the witnesses, outside of Clark, were present at both consultations, if two such were had. If you should find from the testimony that an agreement was made in New York, by which Higgins was not to be paid for the records and reports in the office, but that the sole compensation for the office and business was the assumption on part of the company of the liabilities of Higgins and Craig to their subscribers, then you should find this issue for the defendant, if such an agreement as is here spoken of was reached between the parties; this will also release the company of any liability on account of the St. Loais contract, under which they had taken possession of the Higgins and Craig office at Kansas City, and claimed it as their own. But if you shall find from the testimony that no contract was made at New York, as has been spoken of, but that the contract was that payment should be made to Higgins for the records and reports, or for their use by the company, then you should find the issue spoken of for the plaintiff, Higgins, and allow him the reasonable worth of the records and reports or use under the evidence.

In case you should find from the evidence tbat no agreement regarding the paymont for records and reports was reached between

the parties, and that the company made use of the Higgins & Craig reports for their business, either in making up new reports or in the ordinary course of business, Higgins is entitled to a rea-
55 sonable compensation for such records and reports or the use thereof.

If Higgins, who had charge of the office, made use of his and Craig's reports and records for his own convenience in the transaction of his business without the knowledge or consent of the company, and without the company desiring their use, Higgins is not entitled to compensatian for such use.

In examining the question here presented you will take into consideration the knowledge the company had as to the necessity of using the Higgins and Craig reports in order to run the new office under the Bradstreet Company.

To recapitulate: If you find from the evidence that Higgins was not to be paid for his records and reports, other than implied in the assumption of Higgins & Craig's liability to the subscribers, then you are instructed to find the issues for the defendant, and allow to defendant the amount of overdrawn salary and office expenses over and above the earnings of the office. If defendant's agents interferred with the office, and thereby added expense without the consent of Higgins, you should not allow such additional expenses.

If you should find under the foregoing preceeding instructions that Higgins is entitled to pay for records and reports, or the use of them, you will find the reasonable value thereof under the evidence, and deduct from that amount the overdrawn salary and the amount of expenses incurred in the office beyond its earnings under the limitations mentioned.

56 The defendant at the time objected and excepted to the following portion of said charge: "It will be observed, however, that the contract assumes and proceeds upon the idea that the Bradstreet Company had an office at Kansas City, and as the evidence shows conclusively that they had none other than the one under the contract of June 5th, known as the St. Louis contract, this St. Louis contract in the particulars not abrogated by the New York contract was adopted by the Bradstreet Company, and the office record and reports of the Higgins and Craig office were theirs, unless they relinquished it. The Bradstreet Company cannot claim the use and benefit, if any there be, under the St. Louis contract, and unless that company relinquished by and in the new agreement made in New York any benefits coming to them by the St. Louis contract, they must pay Higgins for such benefits whatever they may be."

And also to the following portion of said charge:

"If you should find from the testimony that an agreement was made at New York, by which Higgins was not to be paid for the records and reports in the office, but that the sole compensation for the office and business was the assumption on part of the company of the liabilities of Higgins and Craig to their subscribers, then you should find this issue for the defendant. If such an agree-

ment as is here spoken of was reached between the parties, this will also release the company of any liability on account of the St. Louis contract, under which they had taken possession of the Higgins & Craig office at Kansas City, and claimed it as there own. But if you shall find from the testimony that no such contract was made at New York as has been spoken of, but that payment
57 should be made to Higgins for the records and reports, or for their use by the company, then you should find the issue spoken of for the plaintiff, Higgins, and allow him the reasonable worth of the records and reports, or their use under the evidence."

And also to the following portion of said charge:

"In case you should find from the evidence that no agreement regarding the pay for records and reports was reached between the parties, and that the company made use of the Higgins and Craig reports for their business, either in making up new reports or in the ordinary course of business, Higgins is entitled to a reasonable compensation for such records and reports or the use thereof."

And also to the following portion of said charge:

"If Higgins, who had charge of the office, made use of his and Craig's reports and records for his own convenience in the transaction of business, without the knowledge and consent of the company, and without the company desiring their use, Higgins is not entitled to compensation for such use. In examining the question here presented, you will take into consideration the knowledge the company had as to the necessity of using the Higgins and Craig reports to run the new office under the Bradstreet Company."

And also to the following portion of said charge:

"If you shall find under the foregoing instructions that Higgins is entitled to pay for the records and reports, or the use of them, you will find the reasonable value thereof under the evidence, and deduct from that amount the overdrawn salary and the amount of expenses incurred in the office beyond its earnings under the limitations mentioned.

58 The cause being thereupon submitted to the jury, the jury returned into court the following verdict:

"We, the jury, find for the plaintiff in the sum of three thousand three hundred and thirty-three dollars and ninety-two cents ($3,333.92.)

WM. S. STARR, *Foreman.*"

And afterwards, and within four days after said verdict, the defendant filed herein its motion to set aside said verdict, and for a new trial of this cause, in words and figures as follows, to wit:

In the United States Circuit Court, Western Division of the Western District of Missouri. May Term, A. D. 1882.

FORRESTER H. HIGGINS, Plaintiff,
vs.
THE BRADSTREET COMPANY, Defendant.

Defendant moves the court to set aside the verdict herein, and for a new trial of this cause for the following reasons, to wit:

1st. Because the court upon the trial admitted illegal, improper, and incompetent evidence on behalf of plaintiff and against the objections of defendant.

2d. Because the court upon the trial of said cause erroneously permitted plaintiff to read in evidence the contract executed by plaintiff and defendant by W. C. Day on June 5th, 1879, at St. Louis, notwithstanding the objection of defendant.

3d. Because the court upon the trial of said cause erred in permitting plaintiff to read in evidence the original answer of defendant herein, notwithstanding the objections of defendant.

59 4th. Because the court upon the trial of said cause in the charge to the jury gave illegal and improper instructions to the jury.

5th. Because the court upon the trial of said cause erred in instructing the jury in the charge delivered to them, as follows: "It will be observed that this contract assumes and proceeds upon the idea that the Bradstreet Company had an office at Kansas city, and as the evidence shows conclusively that they had none other than the one under the contract of July 5th (June 5th), known as the St. Louis contract, this St. Louis contract, in the particulars not abrogated by the New York contracts, was adopted by the Bradstreet Company, and the office records and reports of the Higgins and Craig office were theirs, unless they relinquished it. The Bradstreet Company cannot claim the use and benefit, if any there be, under the St. Louis contract, and unless that company relinquished, by and in the new agreements made in New York, any benefits coming to them by the St. Louis contract, they must pay Higgins for such benefits, whatever they may be," notwithstanding the objections of defendant thereto.

6th. Because the court upon the trial of said cause erred in instructing the jury in the charge delivered to them, as follows:

"If you should find from the testimony that at an agreement was made at New York by which Higgins was not to be paid for the records and reports in the office, but that the sole compensation for the office and business was the assumption on part of the company of the liabilities of Higgins & Craig to their subscribers, then you should find this issue for the defendant. If such an agree-

60 ment as in here spoken of was reached between the parties this will also release the company of any liability on account of the St. Louis contract under which they had taken possession of the Higgins and Craig office at Kansas City, and claimed it as their own. But if you shall find from the testimony that no such contract was made at New York as has been spoken of, but that pay-

ment should be made to Higgins for the records and reports or for their use by the company, then you should find the issue spoken of for the plaintiff, Higgins, and allow him the reasonable worth of the records and reports or use under the evidence," notwithstanding the objections of defendants thereto.

7th. Becaase the court upon the trial of said cause erred in instructing the jury, in the charge delivered to them as follows:

"In case you should find from the evidence that no agreement regarding the pay for records and reports was reached between the parties, and that the company made use of the Higgins & Craig reports for their business, either in making up new reprorts or in the ordinary course of business, Higgins is entitled to a nominal compensation for such records and reports or the use thereof."

8th. Because the court upon the trial of said cause erred in instructing the jury in the charge delivered to them, as follows:

"If Higgins, who had charge of the office, made use of his and Craig's reports and records for his own convenience in the transaction of his business without the knowledge and consent of the company and without the company desiring their use, Higgins is
61 not entitled to compensation for such use.

In examining the question here presented, you will take into consideration the knowledge the company had as to the necessity of using the Higgins & Craig reports in order to run the new office under the Bradstreet Company," notwithstanding the objections of the defendant thereto.

9th. Because the court, upon the trial of said cause, erred in instructing the jury in the charge delivered to them, as follows:

"If you shall find, under the foregoing instructions, that Higgins is entitled to pay for records and reports, or the use of them, then you will find the reasonable value thereof under the evidence, and deduct from that amount the overdrawn salary and the amount of expenses incurred in the office beyond its earnings under the limitations mentioned," notwithstanding the objections of defendant.

10th. Because said verdict is irregular, informal, and insufficient in this—that there is no finding of the issue made by the second defence in said answer pleaded by defendant as a counter claim, and plaintiff's reply thereto.

11th. Because said verdict is irregular, informal, and insufficient in this—that there is no finding therein of the issue made by the third defence in defendant's answer, pleaded by defendant as a counter claim, and plaintiff's reply thereto.

12th. Because the court erred in refusing to instruct the jury, as asked by defendant, as follows: That the plaintiff, Higgins,
62 having testified to the making by the defendant of an express contract in New York to pay him for the records what they were worth, he cannot recover for them unless the jury believe that such contract was made; that under the circumstances of this case, there can be no recovery upon any implied contract.

GAGE, LADD & SMALL,
Att'ys for Defendant.

The plaintiff thereupon filed herein the following affidavit:

STATE OF MISSOURI, *County of Jackson:*

United States Circuit Court, Western Division Western District, Missouri, at Kansas City. May Term, 1882.

FORRESTER H. HIGGINS, Plaintiff,
against
THE BRADSTREET COMPANY, Defendant.

The undersigned jurors, who were upon the jury who tried the above-entitled cause, to wit, Lewis J. Williams, John Hobart, and W. E. McBride, being first duly sworn upon their oaths, say that in arriving at their verdict in the above-entitled cause they first unanimously agreed upon the amount which they believed the plaintiff was entitled to recover under the evidence and instructions upon the cause of action set up in the petition, which was the sum of four thousand five hundred dollars, and that from that sum they deducted the amount of defendant's first counter claim, to wit, $1,104.18, and also the amount they found due defendant upon the second counter claim, to wit, $62.50, or about that sum, being the amount defendant's attorneys claimed in the arguments upon
63 that counter claim, and the result was the sum of $3,333.92, in plaintiff's favor, as shown by the verdict.

(Signed) LEWIS J. WILLIAMS.
JOHN HOBART.
W. E. McBRIDE.

W. E. McBride, upon his oath, states that the matters and things in the foregoing affidavit are true to the best of his knowledge and belief.

Subscribed and sworn to before me this 29th day of May, 1882.

[L. S.] CHARLES S. CRYSLER,
Notary Public.

John Hobart, upon his oath, states that the matters and things in the foregoing affidavit are true to the best of his knowledge and belief.

Subscribed and sworn to before me this 25th day of May, 1882.

[SEAL.] FREDERICK L. PETRI,
Notary Public.

Lewis J. Williams, upon his oath, states that the matters and things in the foregoing affidavit are true to the best of his knowledge and belief.

Subscribed and sworn to before me this 30th day of May, 1882.

[L. S.] FREDERICK L. PETRI,
Notary Public.

The defendant objected to the reading of said affidavit in evidence on the ground that the same was incompetent, being the testimony of jurors regarding matters occurring during the deliberating of the jury upon the case.

64 The court thereupon took said motion under advisement till the next October term, 1882.

Whereupon the plaintiff and defendant filed herein their stipulation, agreeing that said motion for new trial being undecided at said term, and having been by the court taken under advisement until the next term, the aforesaid bill of exceptions might be filed at such next term, and at any time during such term, and it was thereupon ordered by the court that the defendant have leave to file its bill of exceptions at any time during said succeeding October term.

And afterwards, at this October term, 1882, the court overruled said motion of defendant for a new trial of this cause, to which ruling defendant at the time excepted, and brings here this its bill of exceptions, and prays that the same may be allowed, signed, and sealed, and made a part of the record in this cause, which is done accordingly.

(Signed) A. KREKEL, *Judge.*

And the bond for supersedeas is in words and figures as follows, to wit:

In the United States Circuit Court, Western Division of the Western District of Missouri.

FORRESTER H. HIGGINS, Plaintiff,
vs.
THE BRADSTREET COMPANY, Defendant.

Know all by these presents, that we, J. S. Chick and E. K. Thornton, of the city of Kansas, in the county of Jackson, and State of Missouri, are held and firmly bound unto Forrester H. Higgins, of said city, in the sum of five thousand dollars, to be paid unto

65 the said Forrester H. Higgins, his executors or administrators, to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents. Sealed with our seals, dated this sixteenth day of December, A. D. 1882.

Whereas the above named The Bradstreet Company, hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the western division of the western district of Missouri: Now, therefore, the condition of the above obligation is such that if the above named The Bradstreet Company shall prosecute its said writ of error to effect and answer all costs and damages, if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

J. S. CHICK. [SEAL.]
E. K. THORNTON. [SEAL.]

Sealed and delivered in presence of Wm. Campbell.

App'd. A. KREKEL, *Judge.*